IN THE HIGH COURT OF BOMBAY AT GOA.

CIVIL REVISION APPLICATION NO. 166 OF 2002.

Mr. Antonio D'Souza alias
Mr. Mahadev Tatu Morajkar
alias Mr. Mahadev Tatu
Mandrekar (since deceased
represented by his L.Rs.)
(a) Mrs. Amelia Fernandes
widow, r/o Bairro das
Costa, Siolim, Goa.
(b) Mrs. Sabian Simoes,
w/o Inacio Simoes,
r/o Danua Tivim, Goa.
(c) Mr. Manino Fernandes
r/o Bairro das Costa,
Siolim, Goa.
(d) Ms. Maria Fernandes,
r/o Bairro das Costa,
Siolim, Goa.
(e) Mr. Francis Fernandes,
r/o Bairro das Costa,
Siolim, Goa. ... Applicants.

Versus

Shri Donato Maximiano Bocarro,
r/o Santa Cruz, Ilhas Goa,
represented by his Attorney
Ms. Lilia Zuzarte Bocarro,
r/o Costa Vado, Siolim, Goa. ... Respondent.

Mr. S.P. Patkar, Advocate for the Applicants.

Mr. A.F. Diniz, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 19th July 2002.

ORAL JUDGMENT.

The present Civil Revision Application has been filed by the legal representatives of the original defendant against an Order dated 11th March 2002, passed by the Ist Additional Civil Judge, Junior Division, Mapusa, in Regular Civil Suit No. 206/1998/Ist/Addl.. By the aforesaid Order the learned

trial Court had allowed the application of the original plaintiff for bringing the legal representatives of the deceased defendant on record.

2. It may incidentally be mentioned that one of the issues framed by the Court, namely, whether the defendant proves that he is a mundcar and the suit house is his dwelling house is pending adjudication before the Mamlatdar. Since this issue was referred for decision to the Mamlatdar, the suit had been stayed. In the proceedings before the Mamlatdar, the present applicants have been brought on record as the legal representatives of the original defendant.

3. Mr. Patkar has taken exception to the Order passed by the trial Court on the ground, according to him, that the cause of action does not survive against the legal representatives and, therefore, the legal representatives ought not to have been brought on record. In support of his argument, he has placed reliance on the Judgment of the learned Single Judge of this Court reported in **Shri Kesarichand Motichand Shah v. Fakirbhai Kartabhai Koli and others**, 1995 (1) Goa L.T. 26. With the assistance of the learned counsel for the applicants I have perused the facts of the case. The Order assailed in the case cited supra, was whether the entire suit would abate on the death of one

of the defendants on the failure of the plaintiff to bring the legal representatives of the deceased defendant on record. The Court held that the entire suit would not abate and in that background the Court observed that in case of death of one of the defendants on the failure of the plaintiff to bring the legal representatives of the deceased defendant on record, the suit against the other defendants could not have been defeated and, therefore, the entire suit would not abate.

4. I have carefully examined the Order passed by the learned trial Court. The learned trial Court has allowed the plaintiff to bring the legal representatives of the deceased defendant on record. There is no jurisdictional error. It is also not alleged that the learned trial Court has exercised its jurisdiction with any irregularity by bringing the legal representatives of the deceased defendant on record. There is also no failure of justice. The present Civil Revision Application is totally devoid of any substance and the same deserves to be dismissed.

5. Civil Revision application is, accordingly, dismissed with no order as to costs.

(P.V. HARDAS)
JUDGE.

ed's.